

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(GREENBELT DIVISION)

ENTERED

OCT 31 2002

U.S. BANKRUPTCY COURT
DISTRICT OF MARYLAND
GREENBELT

In re:

Mattress Discounters Corporation and
T.J.B., Inc.,

Debtors.

Chapter 11

Case Nos. 02-22330 and 02-22331

(Jointly Administered)

**ORDER AUTHORIZING THE DEBTORS TO
CONDUCT CERTAIN STORE CLOSING SALES
PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY
CODE, BANKRUPTCY RULE 6004 AND LOCAL BANKRUPTCY
RULE 6004-1, AUTHORIZING THE REJECTION OF CERTAIN
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY
PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE, RULE 6006
OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND LOCAL
BANKRUPTCY RULE 6006-1 AND GRANTING OTHER RELATED RELIEF**

Upon the Emergency Motion of Debtors for an Order Authorizing the Debtors to Conduct Certain Store Closing Sales Pursuant to Sections 105 and 363 of the Bankruptcy Code, Bankruptcy Rule 6004 and Local Bankruptcy Rule 6004-1, Authorizing the Rejection of Certain Unexpired Leases of Nonresidential Real Property Pursuant to Section 365(a) of the Bankruptcy Code, Rule 6006 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 6006-1 and Granting Other Related Relief dated October 23, 2002, as amended by a certain Amendment (the "Amendment") dated October 28, 2002 (as amended by the Amendment, the "Motion")¹ seeking an order: (i) authorizing the Debtors to conduct store closing sales at the Stores; (ii) authorizing the sale by the Debtors of all inventory of the Stores in accordance with the procedures and on the terms described in the Motion; (iii) authorizing the store closing sales to be conducted without interference by third parties notwithstanding the terms and provisions of

¹ All capitalized terms used in this Order shall have the definitions attributed to them in the Motion and the Amendment respectively unless otherwise indicated.

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leases or other contracts restricting or prohibiting such sales or which require further consent; (iv) authorizing the exemption of the Debtors from certain state laws and local ordinances regarding store closing sales and bulk sales, and (v) authorizing the Debtors to reject certain unexpired leases (or subleases as applicable) of nonresidential real property; this Court being satisfied that the relief requested in the Motion is in the best interests of the Debtors, their creditors and their estates and after due deliberation and good cause appearing therefor; it is hereby

FOUND, that the Debtors have exercised their reasonable business judgment to immediately begin an inventory liquidation program at their retail stores listed on Exhibits A and B attached to the Amendment (the "Stores"); it is further

FOUND, that the Debtors have exercised their reasonable business judgment to reject the unexpired leases (or subleases as applicable) of the Stores listed on Exhibit B in the manner described in the Motion; and it is further

FOUND, that the approval of the Motion is in the best interests of the Debtors, their estates, creditors and other parties in interest.

NOW, THEREFORE, IT IS HEREBY,

ORDERED, that the Motion is GRANTED to the extent provided herein; and it is further

ORDERED, that the Debtors are authorized, subject to the Budget (as defined in the First Interim Order Authorizing Debtors' Use of Lenders' Cash Collateral and Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363 and Fed. R. Bankr. P. 4001 and any succeeding cash collateral orders), to take any and all further actions as may be reasonably necessary or appropriate to give effect to this Order; and it is further

ORDERED, that pursuant to Section 363(b) of the Bankruptcy Code, the Debtors are authorized to conduct the Store Closing Sales in accordance with the terms of the Store Closing Procedures and this Order, and are further authorized to take such actions necessary to effect such sales without the necessity of further order of this Court; and it is further

ORDERED, that a Store lessor ("Landlord") may protest that the Store Closing Procedures conflict with the applicable lease. If the Debtors and the Landlord cannot resolve any such dispute either party may request this Court to resolve such dispute. Debtors' conduct of the Store Closing Sales in accordance with the Store Closing Procedures may not be asserted by a Landlord as a default under a lease unless the Landlord has specifically protested the Store Closing Procedures and this Court has determined that the Store Closing Procedures constitute a violation of such lease and that such provision should not be overridden for the reasons set forth in the Motion; and it is further

ORDERED, that the Store Closing Sales may be conducted by the Debtors notwithstanding any Michigan or Florida state laws or local ordinances relating to obtaining various state licenses or permits, observing state and local waiting periods or time limits, or satisfying any additional requirements with respect to advertising, conducting the Store Closing Sales as store closings or similar type sales, or transferring inventory between Stores, and bulk sale laws, and no further approval, license, permit of any governmental authority shall be required; provided however, that the Debtors shall file the applications for permission to conduct going out of business sales with the applicable Michigan and Florida state and local authorities with a copy of this Order, and provided further that the Debtors shall not be required to wait for the granting of any license or permit by such state or local authorities to commence the Store Closing Sales; and it is further

ORDERED, that pursuant to Section 363(f) of the Bankruptcy Code, the Debtors are entitled to sell the Merchandise free and clear of all liens, mortgages, leases or other rights or claims of right to use or occupancy, encumbrances, security interest, claims, charges, or other legal or equitable encumbrances and any other matter affecting title (collectively "Liens"), with any Liens in such Merchandise, or the proceeds thereof, to attach to the proceeds of such sale with the same validity, priority and effect as they have against the Debtors and upon the sale of such Merchandise, all Liens shall be released, terminated and discharged as to such sold Merchandise; and it is further

ORDERED, that the net proceeds (proceeds less expenses of sale) of any Store Closing Sale in the state of Florida shall be escrowed pending determination of the Lien priority, if any, to be afforded to the applicable state or local tax authorities as provided for under Florida law.

ORDERED, that each of the Rejected Leases (as defined in the Motion and consisting exclusively of the leases pertaining to the property locations listed on Exhibit B to the Amendment) shall be deemed rejected on the date that is the later of five (5) days after the Debtors provide written notice of rejection to the respective Landlord and the date the Debtors have vacated the premises and surrendered the keys to the Landlord; and it is further

ORDERED, that nothing in the Motion or this Order shall constitute a rejection, or approval for the rejection, of the Excluded Leases; and it is further

ORDERED, that the Rejected Leases with respect to the stores that the Debtors had vacated prior to the date of the original filing of the Motion shall be deemed rejected as of such date of filing; and it is further

ORDERED, each non-debtor party to the Rejected Leases shall file a proof of claim for any claim arising as a result of such rejection within sixty (60) days of the deemed rejection date

of such Rejected Lease, or be forever barred and enjoined from asserting any such claim; and it is further

ORDERED, for cause shown, this Order shall be effective immediately upon entry, notwithstanding Bankruptcy Rule 6004(g), and it is further

ORDERED, that this Court retains jurisdiction to interpret, implement and enforce the provisions of this Order.

Dated: 10 / 31, 2002


UNITED STATES BANKRUPTCY JUDGE

cc:
~~Mattress Discounters Corporation~~
~~T.J.B., Inc.~~
~~Hale and Dorr LLP~~
~~Arent Fox Kintner Plotkin & Kahn, PLLC~~
~~U.S. Trustee~~
Rule 2002 Service List
State Attorneys General
Non-debtor parties to the leases relating to the Stores
Simpson Thacher & Bartlett

Further Ordered that the debtor shall serve a copy of this order upon the listed entities and person set forth above and debtor shall file a certificate of compliance.



cc. *Hale and Dorr LLP*
Arent Fox Kintner Plotkin & Kahn, PLLC
U.S. Trustee

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